

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH MARTIN DEVINE,

Petitioner,

v.

CASE NO. 19-CV-12541
HONORABLE AVERN COHN

WILLIS CHAPMAN,

Respondent.

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ORDER DISMISSING CASE AS DUPLICATIVE
AND
DIRECTING THE CLERK TO FILE THE PETITION IN A PRIOR CASE
AND
DENYING A CERTIFICATE OF APPEALABILITY

I.

This is a habeas case under 28 U.S.C. § 2254. Michigan prisoner Joseph Martin Devine (“Petitioner”) challenges his 2009 state court convictions and current incarceration on three counts of third-degree criminal sexual conduct, M.C.L. § 750.520d(1)(B), for which he was sentenced, as a fourth habitual offender, M.C.L. § 769.12, to concurrent terms of 25 to 40 years imprisonment.

In 2012, however, Petitioner filed a habeas case challenging the same convictions and sentences which is pending before the undersigned. See Devine v. Rapelje, No. 2:12-CV-13125 (E.D. Mich.) (the 2012 case).¹ The Court stayed and administratively closed the 2012 case so that Petitioner could return to the state courts

¹The instant case was reassigned to the undersigned as a companion to the 2012 case. See ECF No. 5.

to fully exhaust state remedies as to all of his intended habeas claims. Petitioner was instructed to move to re-open that case to proceed on an amended petition upon completion of his state court remedies. Instead, Petitioner filed the instant petition.

The instant case must be dismissed as duplicative and/or successive to the 2012 case. See, e.g., Flowers v. Trombley, 2006 WL 724594, *1 (E.D. Mich. March 17, 2006) Harrington v. Stegall, 2002 WL 373113, *2 (E.D. Mich. Feb. 28, 2002); see also Davis v. United States Parole Comm'n, 870 F.2d 657, 1989 WL 25837, *1 (6th Cir. March 7, 1989) (district court may dismiss habeas petition as duplicative of pending habeas petition when second petition is essentially same as first petition).

II.

Accordingly, this case is DISMISSED as duplicative of the 2012 case. The Clerk shall RE-FILE the instant habeas petition in case no. 12-13125 for further consideration. The Court makes no determination as to the merits of Petitioner's claims at this time. Finally, because jurists of reason would not debate the correctness of the Court's procedural ruling, a certificate of appealability is DENIED. See 28 U.S.C. § 2253(c)(1)(a), (c)(2); Fed. R. App. P. 22(b).

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: 9/13/2019
Detroit, Michigan